

**AMENDMENTS TO HEALTH INSURANCE
COVERAGE IN STATE CONTRACTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions related to the requirement that contractors with certain state entities must provide qualified health insurance to their employees and the dependents of the employees who work or reside in the state.

Highlighted Provisions:

This bill:

- ▶ clarifies the application of a waiting period for health insurance may not exceed the first of the month following 90 days of the date of hire;
- ▶ clarifies that the qualified health insurance coverage must be offered to employees and dependents who work or reside in the state;
- ▶ clarifies that the qualified health insurance coverage that must be offered is a minimum standard and an employer may offer greater coverage;
- ▶ amends the definition of qualified health insurance coverage to clarify the standards;
- ▶ amends the enforcement provisions to provide protections for good faith compliance; and
- ▶ clarifies how an employer offering a defined contribution arrangement may comply with state contract requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-2a-818.5, as enacted by Laws of Utah 2009, Chapter 13

19-1-206, as enacted by Laws of Utah 2009, Chapter 13

32 **63A-5-205**, as last amended by Laws of Utah 2009, Chapter 13

33 **63C-9-403**, as enacted by Laws of Utah 2009, Chapter 13

34 **72-6-107.5**, as enacted by Laws of Utah 2009, Chapter 13

35 **79-2-404**, as enacted by Laws of Utah 2009, Chapter 13

36 ENACTS:

37 **31A-30-209**, Utah Code Annotated 1953

38

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **17B-2a-818.5** is amended to read:

41 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
42 **coverage.**

43 (1) For purposes of this section:

44 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
45 34A-2-104 who:

46 (i) works at least 30 hours per calendar week; and

47 (ii) meets employer eligibility waiting requirements for health care insurance which
48 may not exceed the first day of the calendar month following 90 days from the date of hire.

49 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

50 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
51 the contract is entered into or renewed:

52 (i) [~~(A) provides coverage that is actuarially equivalent to the current benefit plan~~] a
53 health benefit plan and employer contribution level that provides coverage with an aggregate
54 actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
55 organization that has the largest insured commercial, non-Medicaid, enrollment of covered
56 lives in the state, as determined by the Children's Health Insurance Program under [Section
57 26-40-106; and] Subsection 26-40-106(2)(a), in which:

58 [~~(B) under which~~] (A) the employer pays at least 50% of the premium for the
59 employee and the dependents of the employee[;] who reside or work in the state; and

60 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

61 (I) rather than the deductible and out of pocket maximum based on income levels, the
62 deductible is \$750 and the out of pocket maximum is \$3,000;

63 (II) dental coverage is not required; and

64 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
65 apply; or

66 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

67 (I) a deductible that is either:

68 [(H)] (Aa) the lowest deductible permitted for a federally qualified high deductible
69 health plan; [and] or

70 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
71 qualified high deductible health plan, but includes an employer contribution to a health savings
72 account in a dollar amount at least equal to the dollar amount difference between the lowest
73 deductible permitted for a federally qualified high deductible plan and the deductible for the
74 employer offered federally qualified high deductible plan; and

75 (II) an out of pocket maximum that does not exceed three times the amount of the
76 annual deductible; and

77 (B) under which the employer pays 75% of the premium for the employee and the
78 dependents of the employee~~[-or]~~ who work or reside in the state.

79 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
80 ~~determined under Subsection (1)(c)(i); and]~~

81 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
82 ~~the dependents of the employee.]~~

83 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

84 (2) Except as provided in Subsection (3), this section applies to all contracts entered
85 into by the public transit district on or after July 1, 2009, if:

86 (a) the contract is for design or construction; and

87 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

88 (ii) a subcontract is in the amount of \$750,000 or greater.

89 (3) This section does not apply if:

90 (a) the application of this section jeopardizes the receipt of federal funds;

91 (b) the contract is a sole source contract; or

92 (c) the contract is an emergency procurement.

93 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,

or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an ordinance adopted by the public transit district under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The public transit district shall adopt ~~[administrative rules]~~ ordinances:

~~[(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,]~~

~~[(b)]~~ (a) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

~~[(vi) the Legislature's Administrative Rules Review Committee; and]~~

125 ~~(c)~~ (b) which establish:

126 (i) the requirements and procedures a contractor must follow to demonstrate to the
127 public transit district compliance with this section which shall include:

128 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
129 (b) more than twice in any 12-month period; and

130 (B) that the actuarially equivalent determination required in Subsection (1) is met by
131 the contractor if the contractor provides the department or division with a written statement of
132 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
133 contractor or the contractor's insurer; ~~and~~

134 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
135 violates the provisions of this section, which may include:

136 (A) a three-month suspension of the contractor or subcontractor from entering into
137 future contracts with the public transit district upon the first violation;

138 (B) a six-month suspension of the contractor or subcontractor from entering into future
139 contracts with the public transit district upon the second violation;

140 (C) an action for debarment of the contractor or subcontractor in accordance with
141 Section 63G-6-804 upon the third or subsequent violation; and

142 (D) monetary penalties which may not exceed 50% of the amount necessary to
143 purchase qualified health insurance coverage for employees and dependents of employees of
144 the contractor or subcontractor who were not offered qualified health insurance coverage
145 during the duration of the contract~~[-]; and~~

146 (iii) a website on which the district shall post the benchmark for the qualified health
147 insurance coverage identified in Subsection (1)(c)(i).

148 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
149 subcontractor who intentionally violates the provisions of this section shall be liable to the
150 employee for health care costs ~~[not covered by insurance:]~~ that would have been covered by
151 qualified health insurance coverage.

152 (ii) An employer has an affirmative defense to a cause of action under Subsection
153 (7)(a) if the employer:

154 (A) relied in good faith on a written statement of actuarial equivalency provided by an
155 actuary; or

(B) if a department or division determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 2. Section **19-1-206** is amended to read:

19-1-206. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under ~~[Section 26-40-106; and]~~ Subsection 26-40-106(2)(a), in which:

187 ~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the
188 employee and the dependents of the employee[;] who reside or work in the state; and
189 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
190 (I) rather than the deductible and out of pocket maximum based on income levels, the
191 deductible is \$750 and the out of pocket maximum is \$3,000;
192 (II) dental coverage is not required; and
193 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
194 apply; or
195 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
196 (I) a deductible that is either:
197 ~~[(H)]~~ (Aa) the lowest deductible permitted for a federally qualified high deductible
198 health plan; [and] or
199 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
200 qualified high deductible health plan, but includes an employer contribution to a health savings
201 account in a dollar amount at least equal to the dollar amount difference between the lowest
202 deductible permitted for a federally qualified high deductible plan and the deductible for the
203 employer offered federally qualified high deductible plan; and
204 (II) an out of pocket maximum that does not exceed three times the amount of the
205 annual deductible; and
206 (B) under which the employer pays 75% of the premium for the employee and the
207 dependents of the employee[; ~~or~~] who work or reside in the state.
208 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
209 ~~determined under Subsection (1)(c)(i); and]~~
210 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
211 ~~the dependents of the employee.]~~
212 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
213 (2) Except as provided in Subsection (3), this section applies to all contracts entered
214 into by or delegated to the department or a division or board of the department on or after July
215 1, 2009, if:
216 (a) the contract is for design or construction; and
217 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

- 218 (ii) a subcontract is in the amount of \$750,000 or greater.
- 219 (3) This section does not apply to contracts entered into by the department or a division
- 220 or board of the department if:
- 221 (a) the application of this section jeopardizes the receipt of federal funds;
- 222 (b) the contract or agreement is between:
- 223 (i) the department or a division or board of the department; and
- 224 (ii) (A) another agency of the state;
- 225 (B) the federal government;
- 226 (C) another state;
- 227 (D) an interstate agency;
- 228 (E) a political subdivision of this state; or
- 229 (F) a political subdivision of another state;
- 230 (c) the executive director determines that applying the requirements of this section to a
- 231 particular contract interferes with the effective response to an immediate health and safety
- 232 threat from the environment; or
- 233 (d) the contract is:
- 234 (i) a sole source contract; or
- 235 (ii) an emergency procurement.
- 236 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
- 237 or a modification to a contract, when the contract does not meet the initial threshold required
- 238 by Subsection (2).
- 239 (b) A person who intentionally uses change orders or contract modifications to
- 240 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 241 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
- 242 director that the contractor has and will maintain an offer of qualified health insurance
- 243 coverage for the contractor's employees and the employees' dependents during the duration of
- 244 the contract.
- 245 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
- 246 demonstrate to the executive director that the subcontractor has and will maintain an offer of
- 247 qualified health insurance coverage for the subcontractor's employees and the employees'
- 248 dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into

280 future contracts with the state upon the first violation;

281 (B) a six-month suspension of the contractor or subcontractor from entering into future
282 contracts with the state upon the second violation;

283 (C) an action for debarment of the contractor or subcontractor in accordance with
284 Section 63G-6-804 upon the third or subsequent violation; and

285 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
286 of the amount necessary to purchase qualified health insurance coverage for an employee and
287 the dependents of an employee of the contractor or subcontractor who was not offered qualified
288 health insurance coverage during the duration of the contract[-]; and

289 (iii) a website on which the department shall post the benchmark for the qualified
290 health insurance coverage identified in Subsection (1)(c)(i).

291 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
292 subcontractor who intentionally violates the provisions of this section shall be liable to the
293 employee for health care costs [~~not covered by insurance;~~] that would have been covered by
294 qualified health insurance coverage.

295 (ii) An employer has an affirmative defense to a cause of action under Subsection
296 (7)(a) if the employer:

297 (A) relied in good faith on a written statement of actuarial equivalency provided by an
298 actuary; or

299 (B) if the department determines that compliance with this section is not required under
300 the provisions of Subsections (3) or (4).

301 (b) An employee has a private right of action only against the employee's employer to
302 enforce the provisions of this Subsection (7).

303 (8) Any penalties imposed and collected under this section shall be deposited into the
304 Medicaid Restricted Account created in Section 26-18-402.

305 (9) The failure of a contractor or subcontractor to provide qualified health insurance
306 coverage as required by this section:

307 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
308 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
309 Legal and Contractual Remedies; and

310 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 3. Section **31A-30-209** is enacted to read:

31A-30-209. State contract requirements -- Employer default plans.

(1) This section applies to an employer who is required to offer its employees a health benefit plan as a condition of qualifying for a state contract under:

(a) Section 17B-2a-818.5;

(b) Section 19-1-206;

(c) Subsection 53A-5-205(3);

(d) Section 63C-9-403;

(e) Section 72-6-107.5; and

(f) Section 79-2-404.

(2) An employer described in Subsection (1) shall, when selecting the default plan required in Section 31A-30-204, select a default plan that is "qualified health insurance coverage" as defined in the sections listed in Subsections (1)(a) through (f).

Section 4. Section **63A-5-205** is amended to read:

63A-5-205. Contracting powers of director -- Retainage -- Health insurance coverage.

(1) As used in this section:

(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(e) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate

342 actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
343 organization that has the largest insured commercial, non-Medicaid, enrollment of covered
344 lives in the state, as determined by the Children's Health Insurance Program under [Section
345 26-40-106; and] Subsection 26-40-106(2)(a) in which:

346 ~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the
347 employee and the dependents of the employee[;] who work and reside in the state; and

348 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):

349 (I) rather than the deductible and out of pocket maximum based on income levels, the
350 deductible is \$750 and the out of pocket maximum is \$3,000;

351 (II) dental coverage is not required; and

352 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
353 apply; or

354 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

355 (I) a deductible that is either:

356 ~~[(A)]~~ (Aa) the lowest deductible permitted for a federally qualified high deductible
357 health plan; ~~[and]~~ or

358 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
359 qualified high deductible health plan, but includes an employer contribution to a health savings
360 account in a dollar amount at least equal to the dollar amount difference between the lowest
361 deductible permitted for a federally qualified high deductible plan and the deductible for the
362 employer offered federally qualified high deductible plan; and

363 (II) an out of pocket maximum that does not exceed three times the amount of the
364 annual deductible; and

365 (B) under which the employer pays 75% of the premium for the employee and the
366 dependents of the employee[; ~~or~~] who work or reside in the state.

367 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
368 ~~determined under Subsection (1)(e)(i); and]~~

369 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
370 ~~the dependents of the employee.]~~

371 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

372 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

(a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and

(b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

(i) the contract is for design or construction; and

(ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or

(B) a subcontract is in the amount of \$750,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative

rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

(C) a public transit district in accordance with Section 17B-2a-818.5;

(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(E) the Department of Transportation in accordance with Section 72-6-107.5; and

(F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

(I) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(II) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; [and]

(B) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this Subsection (3), which may include:

(I) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(II) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(III) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(IV) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an

employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract[-]; and

(C) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(e)(i).

(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs ~~[not covered by insurance.]~~ that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (g)(i) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsection (3)(b).

~~[(ii)]~~ (iii) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (3)(g).

(h) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created by Section 26-18-402.

(i) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(i) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(ii) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(4) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.

(5) The division shall make all payments to the contractor for completed work in accordance with the contract and pay the interest specified in the contract on any payments that are late.

(6) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section 5. Section **63C-9-403** is amended to read:

63C-9-403. Contracting power of executive director -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section 26-40-106; and] Subsection 26-40-106(2)(a), in which:

~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the employee and the dependents of the employee[;] who work or reside in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather than the deductible and out of pocket maximum based on income levels, the deductible is \$750 and the out of pocket maximum is \$3,000;

(II) dental coverage is not required; and

(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

(I) a deductible that is either:

~~[(B)]~~ (Aa) the lowest deductible permitted for a federally qualified high deductible

497 health plan; ~~[and]~~ or
498 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
499 qualified high deductible health plan, but includes an employer contribution to a health savings
500 account in a dollar amount at least equal to the dollar amount difference between the lowest
501 deductible permitted for a federally qualified high deductible plan and the deductible for the
502 employer offered federally qualified high deductible plan; and
503 (II) an out of pocket maximum that does not exceed three times the amount of the
504 annual deductible; and
505 (B) under which the employer pays 75% of the premium for the employee and the
506 dependents of the employee~~[-or]~~ who work or reside in the state.
507 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
508 ~~determined under Subsection (1)(c)(i); and]~~
509 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
510 ~~the dependents of the employee.]~~
511 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
512 (2) Except as provided in Subsection (3), this section applies to all contracts entered
513 into by the board or on behalf of the board on or after July 1, 2009, if:
514 (a) the contract is for design or construction; and
515 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
516 (ii) a subcontract is in the amount of \$750,000 or greater.
517 (3) This section does not apply if:
518 (a) the application of this section jeopardizes the receipt of federal funds;
519 (b) the contract is a sole source contract; or
520 (c) the contract is an emergency procurement.
521 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
522 or a modification to a contract, when the contract does not meet the initial threshold required
523 by Subsection (2).
524 (b) A person who intentionally uses change orders or contract modifications to
525 circumvent the requirements of Subsection (2) is guilty of an infraction.
526 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
527 director that the contractor has and will maintain an offer of qualified health insurance

coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) a public transit district in accordance with Section 17B-2a-818.5;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by

the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract~~[-]; and~~

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs ~~[not covered by insurance.]~~ that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 6. Section **72-6-107.5** is amended to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time the contract is entered into or renewed:

(i) [~~(A) provides coverage that is actuarially equivalent to the current benefit plan~~] a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section 26-40-106; and] Subsection 26-40-106(2)(a), in which:

~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the employee and the dependents of the employee[;] who work or reside in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather than the deductible and out of pocket maximum based on income levels, the deductible is \$750 and the out of pocket maximum is \$3,000;

621 (II) dental coverage is not required; and
622 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
623 apply; or
624 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
625 (I) a deductible that is either:
626 [(H) (Aa) the lowest deductible permitted for a federally qualified high deductible
627 health plan; [and] or
628 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
629 qualified high deductible health plan, but includes an employer contribution to a health savings
630 account in a dollar amount at least equal to the dollar amount difference between the lowest
631 deductible permitted for a federally qualified high deductible plan and the deductible for the
632 employer offered federally qualified high deductible plan; and
633 (II) an out of pocket maximum that does not exceed three times the amount of the
634 annual deductible; and
635 (B) under which the employer pays 75% of the premium for the employee and the
636 dependents of the employee~~;~~ or who reside or work in the state.
637 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
638 ~~determined under Subsection (1)(c)(i); and]~~
639 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
640 ~~the dependents of the employee.]~~
641 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
642 (2) Except as provided in Subsection (3), this section applies to all contracts entered
643 into by the department on or after July 1, 2009, for construction or design of highways if:
644 (a) the prime contract is in the amount of \$1,500,000 or greater; or
645 (b) a subcontract is in the amount of \$750,000 or greater.
646 (3) This section does not apply if:
647 (a) the application of this section jeopardizes the receipt of federal funds;
648 (b) the contract is a sole source contract; or
649 (c) the contract is an emergency procurement.
650 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
651 or a modification to a contract, when the contract does not meet the initial threshold required

652 by Subsection (2).

653 (b) A person who intentionally uses change orders or contract modifications to
654 circumvent the requirements of Subsection (2) is guilty of an infraction.

655 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
656 the contractor has and will maintain an offer of qualified health insurance coverage for the
657 contractor's employees and the employees' dependents during the duration of the contract.

658 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
659 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
660 health insurance coverage for the subcontractor's employees and the employees' dependents
661 during the duration of the contract.

662 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
663 the duration of the contract is subject to penalties in accordance with administrative rules
664 adopted by the department under Subsection (6).

665 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
666 requirements of Subsection (5)(b).

667 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
668 the duration of the contract is subject to penalties in accordance with administrative rules
669 adopted by the department under Subsection (6).

670 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
671 requirements of Subsection (5)(a).

672 (6) The department shall adopt administrative rules:

673 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

674 (b) in coordination with:

675 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

676 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

677 (iii) the State Building Board in accordance with Section 63A-5-205;

678 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

679 (v) a public transit district in accordance with Section 17B-2a-818.5; and

680 (vi) the Legislature's Administrative Rules Review Committee; and

681 (c) which establish:

682 (i) the requirements and procedures a contractor must follow to demonstrate to the

683 department compliance with this section which shall include:

684 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
685 (b) more than twice in any 12-month period; and

686 (B) that the actuarially equivalent determination required in Subsection (1) is met by
687 the contractor if the contractor provides the department or division with a written statement of
688 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
689 contractor or the contractor's insurer; ~~and~~

690 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
691 violates the provisions of this section, which may include:

692 (A) a three-month suspension of the contractor or subcontractor from entering into
693 future contracts with the state upon the first violation;

694 (B) a six-month suspension of the contractor or subcontractor from entering into future
695 contracts with the state upon the second violation;

696 (C) an action for debarment of the contractor or subcontractor in accordance with
697 Section 63G-6-804 upon the third or subsequent violation; and

698 (D) monetary penalties which may not exceed 50% of the amount necessary to
699 purchase qualified health insurance coverage for an employee and a dependent of the employee
700 of the contractor or subcontractor who was not offered qualified health insurance coverage
701 during the duration of the contract~~[-]; and~~

702 (iii) a website on which th department shall post the benchmark for the qualified health
703 insurance coverage identified in Subsection (1)(c)(i).

704 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
705 subcontractor who intentionally violates the provisions of this section shall be liable to the
706 employee for health care costs ~~[not covered by insurance:]~~ that would have been covered by
707 qualified health insurance coverage.

708 (ii) An employer has an affirmative defense to a cause of action under Subsection
709 (7)(a) if the employer:

710 (A) relied in good faith on a written statement of actuarial equivalency provided by an
711 actuary; or

712 (B) if the department determines that compliance with this section is not required under
713 the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 7. Section **79-2-404** is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means a ~~[health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section 26-40-106, and] Subsection 26-40-106(2)(a) in which:

~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the employee and the dependents of the employee~~;~~ who reside or work in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather than the deductible and out of pocket maximum based on income levels, the deductible is \$750 and the out of pocket maximum is \$3,000;

(II) dental coverage is not required; and

(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

(I) a deductible that is either:

~~(I)~~ (Aa) the lowest deductible permitted for a federally qualified high deductible health plan; ~~and~~ or

(Bb) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan; and

(II) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and

(B) under which the employer pays 75% of the premium for the employee and the dependents of the employee; ~~or~~ who work or reside in the state.

~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under Subsection (1)(c)(i); and]~~

~~[(B) under which the employer pays at least 75% of the premium of the employee and the dependents of the employee.]~~

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

(ii) a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply to contracts entered into by the department or a

776 division, board, or council of the department if:

777 (a) the application of this section jeopardizes the receipt of federal funds;

778 (b) the contract or agreement is between:

779 (i) the department or a division, board, or council of the department; and

780 (ii) (A) another agency of the state;

781 (B) the federal government;

782 (C) another state;

783 (D) an interstate agency;

784 (E) a political subdivision of this state; or

785 (F) a political subdivision of another state; or

786 (c) the contract or agreement is:

787 (i) for the purpose of disbursing grants or loans authorized by statute;

788 (ii) a sole source contract; or

789 (iii) an emergency procurement.

790 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,

791 or a modification to a contract, when the contract does not meet the initial threshold required

792 by Subsection (2).

793 (b) A person who intentionally uses change orders or contract modifications to

794 circumvent the requirements of Subsection (2) is guilty of an infraction.

795 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department

796 that the contractor has and will maintain an offer of qualified health insurance coverage for the

797 contractor's employees and the employees' dependents during the duration of the contract.

798 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor

799 shall demonstrate to the department that the subcontractor has and will maintain an offer of

800 qualified health insurance coverage for the subcontractor's employees and the employees'

801 dependents during the duration of the contract.

802 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during

803 the duration of the contract is subject to penalties in accordance with administrative rules

804 adopted by the department under Subsection (6).

805 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the

806 requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) a public transit district in accordance with Section 17B-2a-818.5;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; and

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; ~~and~~

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract[-]; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs [~~not covered by insurance.~~] that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.